

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF A POSSIBLE VACANCY)	CASE NO.
ON THE BOARD OF COMMISSIONERS OF)	2018-00011
NORTH MARSHALL WATER DISTRICT)	

ORDER

By letter dated September 7, 2017, Bobby Gifford, North Marshall Water District Superintendent, advised the Commission that there were vacancies on the North Marshall Water District Board of Commissioners resulting from the expiration of two Commissioners' terms. According to the Superintendent, the terms of the Commissioners, Billy Driskill and Kenneth Shadowen, ended on June 30, 2017, and the members of the Marshall County Fiscal Court had not appointed new or reappointed those Commissioners as of September 7, 2017.

By Order entered January 29, 2018, the Commission established this case to determine whether a vacancy exists on the North Marshall Water District Board of Commissioners. The evidence of record shows that two such vacancies exist. The Marshall County Fiscal Court minutes show that Billy Driskill was reappointed on September 17, 2013, to serve on the North Marshall Water District Board of Commissioners, with his term expiring June 30, 2017. The Marshall County Fiscal Court minutes also show that Kenneth Shadowen was appointed on August 11, 2015, to fill a vacant seat on the North Marshall Water District Board of Commissioners, with his term expiring on June 30, 2017. The Marshall County Fiscal Court minutes further

show that the vacancies created by the expiration of the terms of Mr. Driskill and Mr. Shadowen were not filled within 90 days. As the vacancies created by the expiration of the terms of Mr. Driskill and Mr. Shadowen had not been filled by September 28, 2017, the statutory duty and the exclusive authority to fill the vacancies shifted from the Marshall County Judge/Executive and Marshall County Fiscal Court to the Commission. KRS 74.020(4), which addresses the appointment of members to the boards of commissioners of water districts, states:

Vacancies shall be filled by the same appointing authority which is empowered to make the original appointment. Vacancies resulting from cause other than expiration of the term shall be filled for the unexpired term only. Notwithstanding KRS 67.710, a vacancy resulting from the expiration of a term or the death, resignation, or removal of the incumbent shall be filled by the Public Service Commission if, within ninety (90) days following the vacancy, the vacancy has not been filled by the appropriate county judge/executive with approval of the fiscal court.

While a county judge/executive and a county fiscal court may reach agreement on a candidate for the vacant position, they lack authority to fill the vacancy once it has remained unfilled for more than 90 days. Any action on their part to appoint and approve a candidate after that time constitutes only a recommendation to the Commission.¹

Accordingly, having declared two vacancies, the Commission finds that further proceedings are necessary to determine who should be appointed to fill the vacancies of the expired terms on the North Marshall Water District Board of Commissioners. To

¹ See Case No. 2008-00395, *Request to Fill Existing Vacancies on the Board of Commissioners of Letcher County Water and Sewer District* (Ky. PSC Jan. 28, 2009) at 4–5.

ensure a wide range of candidates are considered, the Commission will permit all interested parties the opportunity to nominate candidates for the positions. The Commission then will determine which of these candidates meet the constitutional and statutory requirements for the office of water district commissioner and, of those candidates who meet these requirements, which are best suited to sit on the Board of Commissioners. We will further direct that a copy of this Order be served upon the Marshall County Judge/Executive, the Marshall County Fiscal Court, the Marshall County Attorney, and North Marshall Water District's Board of Commissioners.

IT IS THEREFORE ORDERED that:

1. Within 20 days of the date of entry of this Order, any person who wishes to nominate a candidate to fill the vacancies on the North Marshall Water District Board of Commissioners shall submit to the Commission in writing the candidate's name, address, and telephone number.

2. Any party filing documents with the Commission shall serve a copy of these documents upon all other parties.

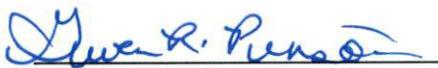
3. Service of any document or pleading shall be made in accordance with 807 KAR 5:001, Section 4(8).

4. The Executive Director shall serve a copy of this Order upon the Marshall County Judge/Executive, the members of the Marshall County Fiscal Court, the Marshall County Attorney, and the North Marshall District's Board of Commissioners.

By the Commission

ENTERED
FEB 21 2018
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2018-00011

*North Marshall Water District
96 Carroll Road
Benton, KY 42025

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